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Allergan, Teva Accused Of Hiding 'Critical' Opioid Info

By **Emily Field**

Law360 (September 1, 2020, 10:11 PM EDT) -- A group of Ohio cities and counties asked the federal judge overseeing the opioid multidistrict litigation to sanction Teva and Allergan for the "willful" failure to produce an audit report over suspicious orders of opioids during discovery.

The municipalities on Monday said Allergan completely failed to produce an audit report that was a "damning account" of its suspicious order monitoring system that detailed how the system didn't meet specific standards set by the U.S. Drug Enforcement Administration. Teva also didn't produce the document even though most of the documents were transferred to the company when it bought Allergan's generic business, according to the motion.

"This is yet another instance of Allergan's continued efforts at obfuscation and delay in discovery in these cases, first refusing to produce any documents related to generic opioids, then refusing to produce any documents for any entities other than Allergan Finance, LLC, and even then, failing to produce this document, which was sent directly to Watson, the predecessor company of Allergan Finance, LLC," the plaintiffs said. "Now it refuses to produce any additional documents in the new case tracks. The court should not countenance these obstructive tactics."

In September 2011, Watson hired health technology company Cegedim to review its suspicious order monitoring system, according to the motion.

Cegedim found specific failures with the system that potentially contributed to drug abuse, according to the motion.

The report found that orders from drug distributors were frequently approved by staff just because their inventories were low, causing the suspicious order monitoring system to be "self-gaming," according to the motion. The company also never made visits to drug warehouses or had inspections to confirm that their customers' programs were legitimate, according to the motion.

The report concluded that 'Watson should re-visit their entire approach to SOM to fully address the specific regulatory requirements and other guidance documents provided by the DEA,'" according to the motion. However, the system stayed in place until Allergan sold its generic opioids to Teva in 2016, according to the motion.

"It was quite a surprise to see that Allergan and Teva withheld this highly relevant evidence which clearly shows the extent of their liability for the opioid crisis," Hunter Shkolnik of Napoli Shkolnik PLLC, counsel for the plaintiffs, told Law360 on Tuesday. "We hope the court issues the appropriate sanction."

The report should have been provided in the first bellwether case alleging that drugmakers and distributors fed fire to the opioid crisis with reckless sales of the painkillers in the MDL, which settled in October just before trial, the municipalities said. But it was only produced recently on Aug. 21, according to the motion.

"The audit reports were important, and every defendant was ordered to produce them or seek them from the subpoenaed party," the plaintiffs said. "Plaintiffs clearly suffered prejudice through defendants' failure to produce the audit report as they did not have it for purposes of summary judgment, trial preparation, or settlement discussions."

Without the report, Allergan was able to make false and misleading statements, such as that the system was already compliant, the municipalities said.

The municipalities asked the court to reopen discovery against Allergan and Teva and to establish as a fact in the MDL that the suspicious monitoring system didn't comply with the law and bar the companies from arguing that they had a reasonable basis to believe otherwise.

Representatives for the companies didn't immediately respond to requests for comment on Tuesday.

The MDL is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Editing by Amy Rowe.
